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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,076	08/22/2003	Yuichi Mori	51015/DBP/A400	9698

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EXAMINER

WILLIAMS, MONICA L

ART UNIT	PAPER NUMBER
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3644

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/647,076

Applicant(s)

MORI ET AL.

Examiner

Monica L. Barlow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder et al. (US 5,363,592) in view of Schur (US 3,097,787) in further view of Caldwell et al. (US 2,773,050).
2. As to Claims 1 and 12, Weder et al. discloses a plant-cultivating container (28 of Fig. 3) having a receiving portion (36 of Fig. 3) for receiving a plant body; the container having at least a portion of it being a vapor-permeable portion comprising a non-porous hydrophilic film ("cellophane" of col. 2 line 52) to which substantially no hydrophobic porous film is superimposed (in Fig. 4 is decorative layer 44 is burlap (see col. 4 lines 3-8)), wherein the selective moisture vapor-permeable portion prevents direct contact between the receiving portion and external water, the selective moisture vapor-permeable portion not allowing water to pass therethrough, but allowing water vapor to pass therethrough. Not disclosed is the material being polyvinyl alcohol or its copolymers. Schur, however, discloses the use of cellophane or PVA that are vapor permeable and liquid impermeable (col. 2 lines 38-40; col. 3 lines 33-45; col. 4 lines 1-13; col. 5 lines 25-33); Caldwell et al. discloses water insoluble PVA which is moisture vapor-permeable but does not allow water to pass therethrough (col. 2 lines 14-21 and

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51-66). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Weder et al. by using a substitute material such as PVA as disclosed by Schur depending upon desired characteristics needed in the film and to use insoluble PVA as disclosed by Caldwell et al. so as to have a longer lasting material.

3. As to Claim 2, Weder et al. as modified by Schur and Caldwell et al. further disclose the moisture vapor-permeable portion permeability of 1×10^3 g/m² per 24 hr (from Applicant's specification where PVA is listed in page 13 line 16 as an acceptable moisture vapor-permeable material).

4. As to Claims 3 and 4, Weder et al. as modified by Schur and Caldwell et al. further disclose the ratio of vapor-permeable portion to total surface area is 20% or more or the total surface area (Figs. 1 and 3 of Weder et al.).

5. As to Claims 5 and 6, the limitations of Claim 1 are disclosed as described above. Weder et al. further discloses the selective moisture vapor-permeable portion a composite material (col. 2 lines 56-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Weder et al. as modified by Schur and Caldwell et al. by adding another water permeable material, for example burlap, to the container to add support or thickness and to place on the outside to meet consumer demand.

6. As to Claim 7, Weder et al. as modified by Schur and Caldwell et al. further disclose a perforated plate (Weder et al. at Fig. 3 in that 38 is a perforation).

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7. Claims 8-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sakai (JP 7-45169) in view of Weder et al. (US 5,363,592) and Schur (US 3,097,787) in further view of Caldwell et al. (US 2,773,050).

8. As to Claims 8, Sakai discloses a plant container (1 of Fig. 1) having a receiving portion for a plant body (9 of Fig. 1); the container having a portion that is a selective vapor-permeable portion (2 of Fig. 1) which has no hydrophobic film superimposed (6 of Figs. is not a hydrophobic film - see translation at page 10); a plant body in the container (Fig. 1); and cultivating the plant with the selective moisture vapor-permeable portion in contact with water and preventing direct contact between the plant body and external water (see Fig. 1). Not disclosed is the selective moisture vapor-permeable portion a film and the film being PVA. Weder et al., however, discloses the selective moisture vapor-permeable portion being a film ("cellophane" of col. 2 lines 48-52); Schur discloses the substitution of cellophane with PVA that is vapor permeable and liquid impermeable (col. 2 lines 38-40; col. 3 lines 33-45; col. 4 lines 1-13; col. 5 lines 25-33); and, Caldwell et al. discloses water insoluble PVA which is moisture vapor-permeable but does not allow water to pass therethrough (col. 2 lines 14-21 and 51-66). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Sakai by using the film of Weder et al. so as to find more use for the film so as to increase sale and to use PVA depending upon desired characteristics needed in the film as disclosed by Schur and Caldwell et al. The container of Sakai as modified by Weder et al., Schur, and Caldwell et al. inherently perform the method steps recited in Claim 8.

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9. As to Claim 9, Sakai as modified by Weder et al., Schur, and Caldwell et al. further disclose the water being temperature controlled water (in that all water has an temperature that is controlled by the ambient environment).

10. As to Claims 10 and 11, Sakai as modified by Weder et al., Schur, and Caldwell et al. further disclose salt water (10 of Fig. 1 of Sakai).

Response to Arguments

11. Applicant's arguments filed 08/08/2007 have been fully considered but they are not persuasive.

12. In response to applicant's argument that Weder et al fails to disclose a structure that prevents direct contact between the plant body and external water, Weder et al discloses the use of cellophane which Applicant states as a possible film to be used in the instant invention on page 13 of the specification. Weder et al's embodiment, as shown in Figure 3, meets the limitations of the Applicant's claims because such limitations as the plant body and external water are not positively claimed. Figure 3 of Weder et al is capable of keeping water from directly contacting the receiving portion.

13. In response to applicant's argument that the presence of external water is not described or suggested in Weder et al, Weder et al's embodiment, as shown in Figure 3, meets the limitations of the Applicant's claims because the limitation of external water is not positively claimed. Figure 3 of Weder et al is capable of keeping water from directly contacting the receiving portion.

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14. In response to applicant's argument that Weder et al's invention does not allow for a space between container and liner in which external water would be placed because Weder et al discloses a hole at the bottom of the container and liner, Examiner considers a space between Weder et al's liner (28) and decorative cover (44). Since the two layers are not laminated, there must be "space" between the two layers, even if the space's width is only several air molecules in size. Also, the liner of Weder et al need not have a hole as disclosed in col.2 lines 40-44.

15. In response to applicant's argument that the cellophane film of Weder et al would decompose if floated on water, Examiner has used the Schur reference for its teaching that cellophane can be substituted by films with other chemical compositions.

16. In response to applicant's argument that water permeability of the polymer film is not necessary in Weder et al, the polymer film is cellophane which has the property of being moisture vapor permeable.

17. In response to applicant's argument that Sakai does not teach or suggest a non-porous hydrophilic film comprising a material selected from the group of polyvinyl alcohol and copolymers thereof, Examiner used the Weder et al reference to disclose the selective moisture vapor-permeable portion being a film (cellophane), Shur disclosed the substitution of cellophane with polyvinyl alcohol that is vapor permeable and liquid permeable, Caldwell et al disclosed water insoluble polyvinyl alcohol which is vapor permeable but does not allow liquid water to pass through.

18. In response to applicant's argument that Sakai does not teach the method step of cultivating the plant body while the selective moisture vapor permeable portion is in

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contact with water and preventing direct contact between the plant body and external water, as shown in Figure 1 Sakai discloses plants in the container while the selective moisture vapor permeable portion is in contact with water and preventing direct contact between the plant body and external water. Given the structure, the claimed method step is inherently performed. Since there is a plant shown, it can be cultivated.

Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica L. Barlow whose telephone number is 571-270-3113. The examiner can normally be reached on Mon to Fri 7:30-5:00, Alternate Friday off, EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Teri Luu
Supervisory Patent Examiner
Art Unit 3644

MB 10/24/2007